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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/586,060

12/29/2006

Johann Schreyer

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EXAMINER

TREYGER, ILYA Y

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

06/15/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/586,060	Applicant(s) SCHREYER ET AL.	
	Examiner ILYA Y. TREYGER	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7 is/are rejected.
- 7) ☒ Claim(s) 8-11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-6 are canceled.
2. Claims 7-11 are examined on the merits.

Response to Arguments

3. Applicant's arguments filed 04/06/2009 have been fully considered but they are not persuasive:

4. With respect to claim 7, Applicants argue that the combination of Elgas and Shettigar does not disclose the claimed invention because the air sensor of Elgas has no controlling function for removing air from an air filter.

However, the conventional use of any sensor assumes the executive device responding to the sensor's signal. Since bubble sensor of Elgas is sensing the air and the pump of Shettigar is a device for removing the air, it would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the apparatus of Elgas with the pump acting in response to the sensor's signal in order to utilize the conventionally known way to remove the air.

5. Applicants further argue that the combination of references does not disclose the claimed invention because Shettigar does not teach or suggest an arrangement in which a pump generates a vacuum to draw air from an air filter only.

However, the pump necessarily draws the air from the location sensing by the sensor, since it works in respond to signal from the appropriate sensor, as explained in paragraph 4 above.

6. Applicants further argue that the combination of Elgas and Shettigar does not

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disclose the claimed invention because the pump of Shettigar described in Col. 11, lines 32-33 does not remove air from blood, but serves another location of the system.

However, a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Since combination of references discloses substantially the same structure, as that claimed by applicant, the structure is fully capable of performing the claimed function.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out

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the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elgas et al. (EP 1086712 A2) in view of Shettigar (US 5,055,198).

Elgas discloses the heart-lung machine comprising an extracorporeal blood circuit established from the patient's venous system to the patient's arterial system (Col. 1, [0002], which means that both the venous line and the arterial line are present; an air bubble sensor (Col. 2, [0012], lines 3, 4); an air filter (Col. 2, [0011], line 5); a blood oxygenator (Col. 2, [0012], line 9); and a pump (Col. 1, [0002], line 4) to pump the blood from the venous system to the arterial system.

Elgas does not expressly disclose the second pump to draw air from the air chamber.

Shettigar teaches the apparatus for recycling autologous blood from a patient comprising the vacuum source (pump) for removing the air bubbles away from the filter (Col. 9, lines 11-14).

Since both Elgas and Shettigar belong to the same problem solving area, i.e. recycling the autologous blood, it would have been obvious to one having ordinary skill in the art at the time the invention was made to supply the apparatus of Elgas with the second pump, as taught by Shettigar in order to provide the system with active removal of air bubbles. (Shettigar, Col. 11, line 32, 33).

Allowable Subject Matter

11. Claims 8-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. The following is an examiner's statement of reasons for allowance: The specific limitations of the "second pump outlet connected to a cardiotomy reservoir" are not anticipated or made obvious by the prior art of record. For example, the closest Prior Art of record US 5,055,198 teaches a vacuum source suctioning the air from the filter chamber (Col. 9, lines 11-14).

However US 5,055,198 fail to teach or suggest the specific limitations ~~that the pump~~ outlet is connected to a cardiotomy reservoir allowing forced evacuation of the air bubbles from the air filter.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ILYA Y. TREYGER whose telephone number is (571)270-3217. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ilya Y Treyger/
Examiner, Art Unit 3761

/Michele Kidwell/
Primary Examiner, Art Unit 3761